

Weed law in Chicago sends native plant gardeners to court
Mary Schmich Chicago Tribune
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[PHOTO] Kathy Cummings in her West Side natural garden Wednesday, May 15, 2013. (Brian Cassella / May 15, 2013)

Chicago's growing season is still young, and so far the alleged villain in Kathy Cummings' garden is only 2 inches tall.

By summer's peak, however, the accused will stand 4 gangly feet once again, and once again someone is sure to mistake it for a weed.

It's milkweed. That is not a weed.

"If my award-winning garden got a ticket for weeds," Cummings said one sunny day last week, standing in the small yard outside her West Town three-flat, "how safe is any garden?"

This question has nagged at her so hard and so long that she has now set out to reform Chicago's weed ordinance.

But let's back up.

Last fall, as my colleague Jon Yates chronicled in the Tribune in December, Cummings, a retired teacher, was ticketed for violating the weed law.

She went to court. She explained that the little dirt plots outside her home are filled with native plants. She showed the judge the plaque she received from the city of Chicago in 2004 commending her naturalized landscape.

The judge, in return, showed her several photographs taken by an inspector from the Department of Streets and Sanitation.

Looked like weeds to him, the judge said.

She was ordered to pay \$640.

On her way out of court that day, Cummings asked for a copy of the photo that had particularly troubled the judge.

"I could see he was referring to milkweed," she said.

Milkweed may sound like a weed, may look like a weed, but it is, in fact, a native plant, the only plant on which the monarch butterfly lays its eggs. The monarch butterfly happens to be the state insect of Illinois.

"The irony," she said.

After the hearing, Cummings might have appealed her case. She resolved, instead, to fight not only her punishment but the law itself.

Using the Freedom of Information Act, she discovered that weeds are big business for the city of Chicago.

In 2009, Cummings says, the city issued 5,522 citations for weed violations and collected a little under a million dollars. Within a couple of years, after the City Council raised the fines dramatically — from \$100 to \$600 minimum — the number of tickets and the revenues shot up.

In 2012, according to Cummings, the city made \$3.7 million from weeds. (A city representative did not answer my request to verify her numbers.)

But were all those unruly plants really weeds? A lot of them surely were, and weeds are pests. They can harbor rats, trash, drug deals. They can trigger allergies.

But how was an average citizen to be sure what constituted a weed?

The ordinance doesn't define a weed except to say it's vegetation taller than 10 inches that isn't maintained. Unlike weed ordinances in some places, Chicago's doesn't name specific weeds.

So a few days ago, Cummings filed a legal complaint against the city.

In addition to calling the law downright unconstitutional, and claiming that native plant gardeners like Cummings are being denied their right to freedom of expression, the complaint asserts that the city is raising millions "on the backs of the poor" with a vague law that's hard to interpret and erratically enforced.

"Say we had a law that says it's illegal to speed," said Cummings' attorney, James L. Bowers. "The problem with that law is that it gives each police officer the authority to decide what's a violation of the law. Somebody may think it's 5 miles an hour. Or 10 miles an hour. The problem for the citizen is they don't know what's illegal until the police officer tells them. We're asking the city to write a better law."

Many native plant lovers share Cummings' feeling. Among them is Monica Buckley, an editor for the American Bar Association and self-described "native plants enthusiast."

In her view, not only is the law's height limit confusing, so is the definition of a weed as vegetation that's not maintained.

"That's a very subjective measure," Buckley said. "At this point, we have a city that's ticketing people for vegetable gardens, for shrubs."

The judges are a problem as well.

"There's no knowledge of horticulture among the judges," she said. "If you say, 'These are native plants and I maintain them,' they will not allow argument of any kind."

Native gardens aren't to everyone's taste. No neat rows of tulips. No poodle hedges. They're a riotous collection of plants that shift with the seasons. Some look weedier than others.

Largely on the grounds that aesthetics matter, a court has already rejected one claim that Chicago's weed law is unconstitutional.

Even some native plant lovers might find Cummings' garden a little too unruly. To her, it's just history and nature at work.

"I like the idea of reaching back and bringing in the history of this part of the planet," she said the other day.

She walked the small garden, touching one plant at a time. Bluebells, wild garlic, Solomon's seal.

"This is horsetail. It's prehistoric."

"This little gem right here is pawpaw."

"These are May apples. My idea is to have children walk home from school and be able to pick fruit."

Plants, like the rest of beauty, are in the dreams of the beholder.

mschmich@tribune.com

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